

February 25, 2021

NYPD Commissioner Shea
New York Police Department
One Police Plaza
New York, NY 10038
Via Email

Re: S.T.O.P. Comment on NYPD's Draft ShotSpotter Impact & Use Policy

Dear Commissioner Shea:

The Surveillance Technology Oversight Project (“S.T.O.P.”)¹ hereby submits our comment in response to the Draft ShotSpotter Impact and Use Policy (“Policy”) published by the New York City Police Department (“NYPD”) on January 11, 2021 pursuant to the Public Oversight of Surveillance Technology Act (“POST Act”). Not only did S.T.O.P. work extensively to promote passage of the POST Act, the law’s enactment was one of the reasons we were founded. Sadly, upon review, the Policy is so grossly inadequate that it not only undermines public trust and accountability, it violates the NYPD’s reporting obligations under the POST Act.

Instead of publishing an impact statement that tells New Yorkers what surveillance tools the NYPD uses, we were provided copy-and-paste responses that are opaque, misleading, and, at times, blatantly wrong. As written, the Policy primarily tell New Yorkers one thing: the NYPD cannot be trusted to use ShotSpotter.

Reliability

Sadly, the Policy fails to provide any evidence that ShotSpotter actually works, let alone that its benefits justify the incredible invasiveness of deploying directional microphones that can effectively act as warrantless eavesdropping devices. The Department claims that ShotSpotter “analysts can determine whether the sound was gunfire or a similar noise, like fireworks or a car backfiring.” Sadly, the evidence for this claim is entirely missing. The NYPD provides no performance data on how often ShotSpotter misidentifies noises as gunshots. The NYPD doesn’t even address the litigation that accuses ShotSpotter personnel of altering records and falsifying evidence. Perhaps the reason that the Department ignores these facts is that they make it almost impossible to justify the continued use of this boondoggle of a system

Data Sharing Agreements

The POST Act requires the NYPD to enumerate all entities which are able to access the Department’s ShotSpotter data. However, instead of providing any meaningful information, the Policy merely states that unspecified “agencies at the local, state, and federal level . . . have limited

¹ S.T.O.P.” is a non-profit organization that advocates and litigates for New Yorkers’ privacy rights, fighting discriminatory surveillance. For more information see <https://www.stopspying.org/>.

access to NYPD computer and case management systems.” At a minimum, the Department must provide a full accounting of all agencies that access such data, along with the frequency of access and any limitations on how such data is used and retained. The NYPD would also need to provide a copy of any/all agreements with external agencies pertaining to the scope of agency access and the volume of data retained.

Racial Ethnic, and Religious Bias

Racial discrimination and bias have defined New York City's policing since before the NYPD was even founded, and that deadly legacy of injustice has continued to this day. The POST Act provided the Department with a unique opportunity to address the ways that its surveillance operations have been driven by, and in turn fueled, discrimination for decades. Sadly, rather than addressing this challenge head on, the Department simply ignored the POST Act's requirements, responding with a terse and unbelievable claim that “The NYPD prohibits the use of racial and bias-based profiling in law enforcement actions.” This statement is patently absurd. The NYPD has long been emblematic to the country as a symbol of biased-policing,² and after the Department's violent and discriminatory response to recent protests, it's clear just how little has changed.³ ShotSpotter exacerbate officers' bias, discriminating against BIPOC and LGBTQ+ communities, putting over-surveilled New Yorkers at risk of wrongful arrests and worse. The Department must not ignore the fact that ShotSpotter is systematically installed and aimed at low-income BIPOC communities, making these over-policed segments of our city bear the cost of ShotSpotter's inevitable errors. Already, this selective placement of ShotSpotter is a major driver of New Yorkers being stopped, questioned, and frisk, partially undoing the civil rights protections secured against these abuses through years of litigation. The technology has no place within New York City's law enforcement.

Retention Periods and Access Rights

To meet the minimum transparency requirements set out in the POST Act, NYPD must also clarify how long data is saved and how the access rights to the information is determined. The Policy does not provide any information about the retention periods of the data collected through ShotSpotter. Instead, the Policy contains broad boilerplate language, referring to “applicable laws, regulations, and New York City and NYPD policies” without disclosing which these are or what they entail. The Department also fails to clearly and coherently describe access rights for NYPD employees and contractors to access this exceptionally sensitive data. Bland phrases stating that access rights are given to personnel with an “articulable need” and that access is “further limited based on lawful duty” are feeble efforts to circumvent the reporting obligations set out in the POST Act.

Furthermore, the NYPD provides absolutely no details on how ShotSpotter systems record New Yorkers, how those recordings are stored, and what happens when those recordings capture personal conversations. ShotSpotter could be capturing some of New Yorkers' most intimate moments, pressing a proverbial glass to the bedroom window, all without any warrant, subpoena, or oversight. The complete failure to provide any technical documentation on how ShotSpotter operates is conclusive evidence of the NYPD's failure to engage in this process in good faith.

² Lauren del Valle, *NYPD didn't substantiate any complaints of police bias over 4 years. Report cites need to improve*, CNN (Updated 12:10 PM EDT, Jun. 27, 2019), <https://www.cnn.com/2019/06/27/us/nypd-bias-complaints-report/index.html>.

³ See Julie Ciccolini and Ida Sawyer, “Kettling” Protesters in the Bronx: Systemic Police Brutality and Its Costs in the United States, Human Rights Watch (Sep. 30, 2020), <https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states>.

Furthermore, given ShotSpotter's unique dangers, we don't just need a revised policy, we need a categorical ban.

NYPD Data Security

The NYPD is not just asking New Yorkers to allow the Department access to huge volumes of intimate data about our private lives, they want us to let that data to be accessible to anyone who can break into the NYPD's systems. Sadly, we have no way to judge the risk that this data could fall into the hands of any hacker, criminal, or rogue state that could breach NYPD security measures. That is because the NYPD's data security promises are full of repetitive and empty phrases. The section contains general descriptions about the safeguards in place for the Department's case management and computer systems, stating that NYPD uses a "multifaceted approach to secure data and user accessibility."

Not only is the provided information insufficient to build public trust and accountability, it is also so generic as to be almost completely useless from a technical standpoint. The NYPD references its use of Lightweight Directory Access Protocol, dual factor authentication, Secure Socket Layer, and Transport Layer Security. These rudimentary encryption and security features are so ubiquitous that it would only be notable if they were not used as part of the NYPD's data security policy. This is about as persuasive as arguing that a car is safe simply because it has functioning seatbelts; the real surprise would be finding a car that did not. The enormous amounts of highly sensitive data processed through the NYPD's ShotSpotter systems call for higher security standards than what is described in the Policy.

NYPD Training

The Policy recognizes the self-evident truth that training is an important factor for the NYPD's use of ShotSpotter. For example, the Policy states that every NYPD employee who gain access to ShotSpotter must first complete a "mandatory training related to use of the technology." Sadly, this is not the introductory clause to an expansive training policy, this is almost the whole of the Policy's details on the topic. The Policy's training section is grossly insufficient to say the least. The Policy leaves unclear if officers are still trained to use pseudoscientific techniques or other approaches that would increase the error rate of ShotSpotter.

Comparison of the POST Act to other CCOPS Jurisdictions

The Department's failure to provide the public with meaningful details is particularly egregious in light of the strong national record of compliance with analogous efforts. As of today, more than a dozen localities have adopted Community Control Over Police Surveillance (CCOPS). The POST Act is an outlier, both in that it is one of the weakest laws in the country and because the NYPD's response has shown an unprecedented effort to circumvent even the most minimal transparency requirements.⁴ While many municipalities' legislations require acquisition approval, bans non-disclosure agreements and provide a right of action for private citizens, the POST Act only requires the NYPD to provide annual reports and use policies. Notwithstanding this, the NYPD is unable to meet the requirements set out in the POST Act, by only providing opaque or boiler-plate responses in the Policy, hiding the details needed for meaningful public engagement. As a result, it is clear that

⁴ Hogan Lovells and Surveillance Technology Oversight Project, *New CCOPS On The Beat* (Feb. 10, 2021), <https://static1.squarespace.com/static/5c1bfc7ee175995a4ceb638/t/602430a5ef89df2cc6894ce1/1612984485653/News+CCOPS+On+The+Beat.pdf>.

more aggressive legislative responses are required, including a completely ban on the NYPD's use of ShotSpotter.

Artificial Intelligence and Machine Learning.

The Policy falsely states that the NYPD's ShotSpotter does not use artificial intelligence or machine learning. This claim is so preposterous that it demonstrates either an intentional misrepresentation or gross incompetence. Notably, within days of Publishing the Policy, the New York City Algorithmic Management and Policy Office released its report on the use of automated decision systems in New York City. Among the artificial intelligence systems that were listed was the exact same ShotSpotter that was misclassified in the policy. This blatant error speaks to the NYPD's lack of candor and rigor in completing the Policy.

Concluding Remarks

The cumulative impact of the forgoing errors and omissions is clear: the NYPD is breaking the law. The POST Act is not a formality, it is not a nicety, it is binding legislation with full force of law. When the NYPD fails to comply with the statute, it seeks to overturn the will of the New York's elected leaders, accomplishing by force what it failed to do through lobbying. If the NYPD persists in this flagrant disregard for its statutory reporting requirements, it will simply hasten the enactment of far more sweeping changes to the Department's surveillance powers in the coming months.

Sincerely,

/s/ _____
Albert Fox Cahn, Esq.
Executive Director